Cities at the Crossroads:
Addressing Intergovernmental Structures for Western Canada's Cities

Denis Wong
Policy Analyst
Canada West Foundation

August 2002

104-06952/

This report was prepared by Canada West Foundation Policy Analyst Denis Wong. The author wishes to thank Dr. Roger Gibbins, President and CEO of the Canada West Foundation for his contribution to this report.

The opinions expressed in this document are those of the author and not necessarily those of the Canada West Foundation's donors, subscribers, or Council. Permission is hereby granted by the Canada West Foundation to reproduce this document for non-profit and educational purposes. Additional copies are available from the Canada West Foundation, or may be downloaded from our website (www.cwf.ca).

ISBN 1-895992-43-5

© 2002 Canada West Foundation

Printed in Calgary, Alberta, Canada

INTRODUCTION

Canadians live in an era of policy interdependence, where the pursuit of common goals, be they for enhanced security, environmental protection, or increased trade, has led governments at all levels to employ a wide range of interlocking mechanisms. On the international stage, examples include the North Atlantic Treaty Organization (NATO), the World Trade Organization (WTO), and the North American Free Trade Agreement (NAFTA), while the Annual Premiers' Conference and the Western Premiers' Conference exemplify such mechanisms at the national and regional levels. These mechanisms are seen as the foundation for reaching common goals amidst an increasingly complex global environment.

Cities are often described as Canada's economic engine. It is not surprising, then, that there is a growing drive for the federal, provincial, and municipal governments to work together to ensure viable cities. While several mechanisms are already in place, they all flow directly or indirectly from the *Constitution Act, 1867*, drafted when Canada was primarily rural and existing municipalities were relatively small in size.

Today, eight in ten Canadians live in urban settings and some cities are more populous than provinces. For example, the population of metropolitan Toronto is larger than each of the western provinces, while Calgary's population exceeds that of any Atlantic province.

In the current context, the historical legacy raises several important questions. Are these intergovernmental mechanisms still effective? Is the status quo sufficient for western Canada's cities? If not, are minor changes necessary, or do the existing mechanisms require a major overhaul?

To answer these questions, Canada West interviewed 25 senior politicians, public servants, and municipal association executives between February and May 2002. The interviews included municipal representatives (mayors and city managers) from Calgary, Edmonton, Regina, Saskatoon, Vancouver, and Winnipeg; provincial representatives (ministers, deputy ministers, assistant deputy ministers, and directors) from Alberta, British Columbia, Manitoba, and Saskatchewan; federal representatives (deputy ministers and senior management); and representatives from the Federation of Canadian Municipalities (FCM), the Alberta Urban Municipalities Association (AUMA), the Union of British Columbia Municipalities (UBCM), the Association of Manitoba Municipalities (AMM), the Saskatchewan Urban Municipalities Association (SUMA), Economic Development Edmonton, and the Canadian Urban Institute (CUI). This qualitative research was supplemented by legal analysis, an urban strategy literature review, and a study of a variety of recent reports from the four western provinces and their major cities.

Throughout the research, it became clear that all governmental actors are committed to building better cities. While a few respondents indicated that the existing intergovernmental mechanisms are effective, the vast majority believe that change is necessary. They presented a myriad of ideas ranging from minor adjustments of the status quo to substantial changes in intergovernmental consultation and legislation, and in some cases, even constitutional amendment.

Cities at the Crossroads: Addressing Intergovernmental Structures for Western Canada's Cities considers each of the options raised, noting the strengths and weaknesses of each, and identifying the intergovernmental strategies that appear most promising for supporting viable and competitive cities. While *Cities at the Crossroads* focuses primarily on cities in western Canada (in particular the Cities of Calgary, Edmonton, Regina, Saskatoon, Vancouver, and Winnipeg), its findings are of relevance to cities across the country.

IS THE STATUS QUO WORKING?

The current intergovernmental relationship between legislative authorities at the federal, provincial, and municipal levels is grounded on the division of powers under the *Constitution Act, 1867*. Sections 91 and 92 divide all legislative powers between the federal and provincial governments, with "municipal institutions," "property and civil rights," and "all matters of a merely local or private nature in the province" falling under the exclusive jurisdiction of provincial legislatures. The Supreme Court of Canada, in *R. v. Sharma* ([1993] 1 S.C.R. 650), interpreted these powers to mean that city authorities are technically not governments but are statutory bodies only, restricted to powers expressly conferred by provincial statute.

This division of powers has created two very different categories of municipal relationships: provincial-municipal and federal-municipal.

THE PROVINCIAL-MUNICIPAL STATUS QUO

Because city authorities are creatures of the province, the relationship between provincial and municipal governments typically flows from provincial municipal legislation.

On the surface, legislation establishing and governing municipalities is very similar across the four western provinces. All four provinces assign to city authorities the general power to provide for good government, and to ensure the welfare of the local population. To achieve these ends, western cities have each been given similar responsibilities over the regulation and servicing of property, parks, culture and recreation, environmental health, and libraries. They also have similar revenue generating tools that include property taxes, business taxes, user fees, and license and permit fees.

A closer look, however, shows that there are also key differences in the legislative approaches provinces have taken to ensure that city authorities achieve their objectives. Differences are concentrated in four areas: (1) types of municipalities; (2) powers of city authorities; (3) areas of jurisdiction over which municipalities can exercise their powers; and (4) revenue options that are available to municipalities.

1. TYPES OF MUNICIPALITIES

The four western provinces have adopted different legislative models to establish the relationship between the provincial government and its municipalities.

Alberta, for example, employs a "one statute fits all" model. Save some exceptions, the provincial government accords to urban municipalities similar roles, responsibilities, and resources as are given to their rural counterparts. This model, however, is under active discussion.

The Saskatchewan government, by contrast, has a "categories" model that recognizes four distinct municipalities: cities, including Regina, Saskatoon, and 11 other cities (soon to be governed by the *Cities Act* [1]); other urban municipalities such as towns and villages (governed by the *Urban Municipality Act);* rural municipalities (governed by the *Rural Municipalities Act);* and northern municipalities (governed by the *Northern Municipalities Act).*

British Columbia and Manitoba use a "city-specific" model when it comes to Vancouver and Winnipeg. Vancouver has its own statute in the form of a city charter while the rest of the province's municipalities, urban and rural, fall under the *Local Government Act* (soon to be replaced by Community Charter legislation). Winnipeg also has its own act, the *City of Winnipeg Act* (to be replaced by the *City of Winnipeg Charter Act* [2]*).* Other municipalities in Manitoba, urban and rural, are governed by the *Manitoba Municipality Act.* Interview respondents from both Vancouver and Winnipeg argued that city-specific statutes were appropriate due to disproportionate population sizes (and therefore needs) compared to other cities within their provinces.

2. POWERS OF CITY AUTHORITIES

In western Canada, cities are given one of two types of powers. City authorities from Vancouver and Winnipeg are given specific *corporate* (or *artificial person)* powers. Any action beyond the scope of these powers is considered outside the City's mandate until the provincial government amends its municipal legislation. Over time, successive amendments to the list of authorized municipal powers have rendered the municipal legislation exceedingly complex and cumbersome.

Calgary and Edmonton (and soon, Regina and Saskatoon) possess *natural person* powers, which are viewed by many respondents as more enabling than corporate powers. Unlike corporate powers, natural person powers allow a city authority to perform any act within its jurisdiction unless it is specifically disallowed by legislation. One implication is that the cities have the capacity to engage in creative financing arrangements, such as public-private partnerships, without requiring legislative amendments. In light of the broad scope of natural person powers, municipal legislation is simplified as the provincial government does not need to provide an exhaustive list of specific powers to enable city authorities to conduct their business.

3. AREAS OF JURISDICTION

There are two approaches in delegating responsibilities to city authorities: "laundry list" and "spheres of jurisdiction." The "laundry list" approach is currently used in British Columbia (in the case of Vancouver) and Manitoba. It consists of enumerating each and every responsibility that city authorities possess. Many respondents argue that this model is "cumbersome because the exhaustive list makes the statutes look like a telephone directory."

These same respondents also found this approach to be restrictive as it limits city authorities with respect to any responsibility beyond those expressed in the list. Additional governance can only be undertaken following amendment to the statute.

The "spheres of jurisdiction" approach, used in Alberta, Saskatchewan, and all British Columbia municipalities except Vancouver, provides a sharp contrast. Unlike the "laundry list" approach, municipalities can act on all matters that fall under any of the enumerated spheres of jurisdiction, except in specific areas expressed in the legislation. Most respondents prefer this approach for its simplicity and flexibility as amendments to the relevant provincial act are not necessary to encompass "new" issues as they arise.

DISCUSSION BOX 1: Laundry List Versus Spheres of Jurisdiction Approaches

There is a sharp contrast between the capacities of the Cities of Calgary (spheres of jurisdiction approach) and Vancouver (laundry list approach) to address the issue of nuisance. Under the Alberta Municipal Act, nuisance is one of the 11 listed areas of municipal responsibilities (spheres of jurisdiction). As the legislation does not restrict municipalities in dealing with nuisance, Calgary can act in every possible matter that contains a nuisance component without requiring legislative amendments.

By contrast, Vancouver's responsibilities extend to 32 specific types of nuisance, including sale and possession of fireworks, public bathing-pools, laundries, removal of rubbish, and impounding of animals. Save legislative amendments, anything over and beyond the 32 listed categories is outside the jurisdiction of the City.

4. REVENUE OPTIONS

In general, city authorities across western Canada possess similar sources of revenues, comprised mainly of property taxes, business taxes, local levies, user fees, municipal fines, licenses and permits. However, every city respondent interviewed holds that these sources of revenues are inadequate. In some instances, provincial governments have acquiesced to the cities' requests for additional revenue options by offering a variety of other schemes. For example, Vancouver receives a share of provincially controlled gaming revenues through the Host City Agreement signed in 2000. It also receives a portion of a hotel tax collected in the city under the *Hotel Room Tax Act*. In Alberta, the province entered into a six-year agreement, beginning in 2000, with Calgary and Edmonton that would see the two cities receive five cents on every litre of fuel that is sold within each of the cities' boundaries. (This agreement has experienced some stresses, as discussed later in this report.)

The Current Provincial-Municipal Relationship

While municipal legislation provides the framework for provincial-municipal relationships, it does not capture the entire picture. In particular, municipal legislation does not reflect the intergovernmental realities of consultation and side agreements, practices seen as important by all respondents.

Despite the lack of reference to formal consultation procedures in municipal statutes, provincial respondents report that they enjoy significant "day-to-day consultation with municipal governments." In addition to ad hoc consultation, municipal authorities are often invited, along with other stakeholder groups, to formal provincial consultation processes. An example of this is the Alberta Future Summit held in February 2002.

It should also be noted that municipal statutes are flexible enough to allow provincial governments to enter into side agreements with individual, or groups of, selected municipal authorities. Examples of side agreements are the Alberta and British Columbia revenue-sharing agreements noted earlier.

These practices aside, however, several respondents express concern that the current intergovernmental structure is "not good enough." Two key areas of dissatisfaction raised repeatedly by the respondents are: lack of municipal control and inadequate municipal voice.

The lack of municipal control is a particular concern to city respondents. According to one, "the current situation has been most unsettling for city authorities as the provincial governments can change [the cities' responsibilities and revenues] unilaterally according to their whims."

The current legislative framework allows provincial governments to unilaterally download services to municipal authorities *via* amendments to the municipal legislation. In addition to the

unilateral nature of the downloading of responsibilities, respondents express dissatisfaction that the downloading is often not accompanied by the necessary revenues to offset the increased expenses that city authorities encounter. As one respondent said, city authorities are "faced with a financial crunch trying to fill the shoes of the provincial government without having their revenue generating capacities."

This raises another concern about municipal powers. The provincial government has full control over the types of revenues that cities can generate, leaving municipal authorities dependent on limited sources of revenues and inconsistent provincial grant funding. For example, in October 2001, the Alberta government unilaterally cut the cities' share of the fuel tax from the mutually agreed upon five cents per litre to 4.25 cents. This was further reduced to 1.2 cents on March 20, 2002, then restored (after vigorous city lobbying) to five cents two days later. As one Alberta respondent noted, "the flip-flop in fuel taxes shows how unstable [these revenues] are for the municipal government."

A second point of dissatisfaction with the provincial-municipal status quo is the lack of an adequate municipal voice in provincial urban policies and programs. Although many city respondents applaud existing consultations with their provincial government as a positive step toward improving intergovernmental relationships, they contend that the consultative process needs improvement. The fact that existing consultations are carried out on an ad hoc basis does not provide provincial governments and city authorities with sufficient time and opportunity to address core urban issues. The lack of systematic consultation also hinders any follow up on previous decisions.

An additional problem city respondents identified is that "the cities' voices are not always heard." For instance, when Alberta and British Columbia each held formal consultations about their province's future in early 2002, city authorities were among many participants, and the opportunity to express urban concerns was diluted by the myriad of issues raised. And, of course, under the current legislative structure, provincial governments are under no obligation to act upon what they hear from city authorities. Provinces have the ultimate decision-making power.

THE FEDERAL-MUNICIPAL STATUS QUO

The relationship between the federal government and city authorities is less extensive than the provincial-municipal relationship, primarily because the federal government lacks constitutional authority to legislatively regulate municipal affairs. The federal government's activities in municipal issues primarily flow through its indirect powers of intervention (i.e., acting in areas of exclusive federal jurisdiction that indirectly impact on municipalities, such as interprovincial transportation, criminal law, airports, and harbours) and through its spending power.

The importance of the federal spending power should not be underestimated. The courts have determined, in *Central Mortgage and Housing v. Cooperative College Residences* ((1975), 71 D.L.R. 183 (Ont. C.A.)), that there is nothing in the Constitution that prevents the federal government from spending in areas that are under exclusive provincial jurisdiction. In this respect, the federal government has a free hand in spending on any urban matter, opening the door to considerable federal-municipal interaction.

The Current Federal-Municipal Relationship

In practice, the federal government's relationship with city authorities primarily revolves around consultation and/or the implementation of federal programs. Federal respondents indicate that consultation between city authorities and the federal government occurs at several levels, ranging from informal ad-hoc consultations between departments to larger consultation efforts such as the Prime Minister's Caucus Task Force on Urban Issues. They believe these consultations provide a powerful means for the federal government to tailor its policies and programs to citizens' needs. Indeed, these consultations have often been the precursor of the federal government's involvement in urban affairs, such as the recent decision to instigate programs to address homelessness.

Although most city respondents welcome the federal government's involvement in urban issues, many express concerns about the way the federal government interacts with cities. First, many state that their relationship with the federal government is erratic, mainly because the federal government does not have a sustained policy on urban issues. In addition, federal initiatives, although beneficial to urban centres, have proven to be "unreliable" as they often have a short life and are not offered in any systematic way.

A second area of concern is the lack of an adequate municipal voice in federal urban policies and programs. According to one

respondent, Ottawa holds "all the strings" and does not necessarily consult with municipalities. As a result, this may lead to federal policies and programs that are not attuned to the cities' priorities. A third area of concern is the implicit need for provincial consent. Although the federal government can *legally* spend its money in urban areas without the approval of the provincial government, *politically* it "has to be mindful [in its dealings with city authorities] so as not to be seen as excessively interfering in provincial matters." The result, explains one respondent, is that whatever relationship the federal government can safely establish with city authorities is dependent on the provincial government's consent.

Overall, while many city respondents describe their relationship with the provincial and federal governments as "good," they also see an urgent need to improve that relationship to facilitate integrated urban policies. Provincial and federal respondents are also of the opinion that the current intergovernmental relationships need to evolve into something more meaningful and effective for all parties. Several alternatives for improving intergovernmental structures are proposed by our respondents. These will be explored in the remainder of this paper.

IMPROVING THE PROVINCIAL-MUNICIPAL RELATIONSHIP

Respondents make two suggestions for improving provincial-municipal relationships: standing committees and municipal act reform.

1. STANDING COMMITTEES

Given the growing provincial-municipal policy interdependence, some respondents indicated that ad hoc consultation, although "helpful," is "insufficient." According to one respondent, a "formal consultation process" should be set up whereby provincial and city players would form various standing committees, similar to those already existing at the federal-provincial level, and meet on a regular basis. Possible areas for standing committees are education, health, finance, infrastructure, social services, and environment, to name a few. The most important consultation, however, would be a Premier-Mayors meeting, similar to a First Ministers meeting, where the future of cities could be discussed at the highest political level.

Advantages

Advantages flowing from these consultations would be numerous, according to the respondents.

- *Bringing an "urban perspective" to provincial policies:* As one city respondent reports, this process would provide city authorities with the opportunity to bring forward an "urban perspective" to provincial decision-making, ensuring that the provincial government is aware of how its policies affect urban areas.

- *Ongoing communication:* Formal committee meetings would ensure that there is an "ongoing dialogue" between interested parties from both governments. Foreseeable benefits, according to one respondent, are the harmonization of policies and programs, better coordination of activities, more effective delivery of services, and possible development of joint policies.

- *Better leverage from city representatives:* The formalization of the consultation process could also be "advantageous to cities," according to one respondent, as this process would allow city mayors to "present a more united front" at scheduled meetings. The result could provide better leverage on the part of city mayors to "influence the [province's] agenda" and address their priority issues.

Disadvantages

Respondents are concerned that the proposed standing committees have serious flaws that could undermine their effectiveness.

- *Pressure to include all municipalities:* Some municipal respondents express concerns that the provincial government may be pressured to include smaller municipalities in various standing committees. The possibility of upsetting "excluded" constituents may force the provincial government to agree to "all-inclusive" standing committees, thereby diluting the voices of the larger cities.

- *Provinces have the final say:* The major disadvantage of standing committees is the non-binding nature of any recommendation from city authorities. City authorities may exert some pressure due to the size of their populations, but ultimately the provincial government possesses the final decision-making power.

2. MUNICIPAL ACT REFORM

Although many respondents believe the implementation of standing committees is vital in strengthening the structure between the provincial government and city authorities, they doubt the committees' effectiveness unless accompanied by legislative changes that would empower city authorities with greater roles, responsibilities, and revenues. These changes range from minor amendments to a complete overhaul of the municipal statutes in the form of charters.

(a) Minor Amendments

Proponents for minor changes to municipal legislation are primarily city respondents from Saskatchewan. According to one respondent, the goal of amending the municipal statutes "is not to expand the powers of cities but to provide them with greater flexibility." What is needed, explains another respondent, "is a streamlined process that would make it easier for municipalities to operate." To this end, after numerous meetings with civic officials and the Department of Municipal Affairs and Housing, and after taking into account comments from various parties, Saskatchewan's 13 city mayors presented to the Minister of Municipal Affairs a legislative draft (the new *Cities Act)* that would, in their opinion, improve their relationship with the provincial government (Box 2).

According to one respondent, the proposed act "is basically a spin-off of the Alberta [Municipal Act]." Thus, in the eyes of Saskatchewan city respondents, natural person powers and broad spheres of jurisdiction are fundamental components in defining their relationship with the provincial government. However, the fact that the legislative draft contains only minor changes to municipal revenue powers is by no means indicative of the satisfaction of city authorities with the current fiscal structure. Current revenue options are seen as problematic and too limited, but as one Saskatchewan respondent mentions, "there is no appetite for new taxes." The solution, according to another, "is to look at alternate sources of revenue including revenue-sharing schemes with the provincial government." Since these options can be set up in side agreements, they need not be introduced in the municipal legislation.

DISCUSSION BOX 2: Changes Reflected in Saskatchewan's *Cities Act*

- Replacing corporate powers with natural person powers
- Possibility of moving capital funds toward operating expenses
- Protection of cities from claims regarding sewer and water back-ups unless negligence is proven
- Broadening of the application of special taxes to any municipal service or purpose
- Wider use of license fees
- Reliance on tax rates to calculate property taxes instead of uniform mill rate and mill rate factors
- Use of separate tax notices for each tax collected
- Simplification of the appeal process for property assessments for homeowners and small businesses
- Removal of the requirement for individual borrowings to be approved. Cities will have a debt limit on their borrowings
- Ability to provide loans and guarantees to non-profit organizations
- Requirement for council to set a purchasing policy
- Power to set investment policies
- Matters that must be dealt with in open Council
- More stringent requirements for public notice
- Broader areas for disclosure

SOURCE: Saskatchewan Cities Act, 2002

Advantages

Making minor amendments to the existing legislative structure offers several advantages:

- *Effective when fine tuning is necessary:* Saskatchewan city respondents believe that much more could be achieved by making a series of minor improvements than by trying to make major amendments at any given time. Having obtained greater flexibility in responsibilities, they now plan to lobby for other changes, mainly pertaining to revenue capacity.

- *Easy for the provincial government to implement:* For Saskatchewan provincial respondents, making minor amendments is a straightforward process as a simple majority in the Legislative Assembly suffices.

Disadvantages

Although recognizing that this option has its benefits, most respondents argue that it is not the optimum option for the following reasons:

- *Ineffective when significant changes are needed:* Solutions to the municipal concerns discussed earlier would necessitate so many "minor amendments" that effecting these changes would render the legislation complex and cumbersome.

- *Fundamental problems related to the status quo are likely to remain unresolved:* Some city respondents indicate that minor amendments would not solve the fundamental problems that cities face. According to them, the provincial government should adopt a different approach to defining city authorities. One suggestion is to introduce charter legislation.

(b) Charter Legislation

For many respondents, charter legislation provides the opportunity for the provincial government to establish a "higher basic relationship with municipalities" by agreeing to consider them as "equals." This concept has been championed by the Government of British Columbia with its draft Community Charter legislation.

According to many respondents, the content of a charter should at a minimum bestow upon municipalities natural person powers and broad spheres of jurisdiction. Additional components of a charter could include: (1) greater municipal control over their responsibilities; (2) wider range of revenue generating options; and (3) a dispute resolution mechanism.

City respondents say that any charter should provide municipalities with greater control over their responsibilities and contain a mechanism that would prevent provincial governments from unilaterally downloading their responsibilities to municipalities. To this effect, they propose that a clause be introduced that requires municipal consent for any responsibilities that the provincial government wishes to download. They also

DISCUSSION BOX 3: Highlights of British Columbia's Draft Community Charter Legislation

Principles of municipal governance

- Recognizing municipalities as an order of government
- Recognizing municipalities as autonomous, responsible, and accountable

Principles of municipal-provincial relations

- Consultation required before amendment of specified local government enactments or a reduction of revenue transfer
- Provision for consultation agreements between the provincial government and the Union of British Columbia Municipalities on any matter that affects local governments, including a requirement that the parties must make all reasonable efforts to reach agreement when negotiating a consultation agreement
- No downloading of responsibilities without provision of resources
- Municipal participation in matters affecting municipalities

Municipal powers

- Broad spheres of jurisdiction
- Natural person powers
- Broad regulatory powers
- Ownership of parks and highways within their jurisdictions

Public participation and accountability

- Public notice
- Requirement for an annual municipal report
- Accessibility of records to the public

Municipal revenues

- Enlarged menu including
  - Fuel tax
  - Resort tax
  - Local entertainment tax
  - Parking stall tax
  - Hotel room revenue tax
  - Road tolls
  - Fees as a tax
- Tax exemptions
  - For government and non-profit organizations
  - Possible tax exemption for new, expanding or struggling businesses

SOURCE: British Columbia, Community Charter: Key Elements of the Draft Legislation, 2002.

suggest that any proposal to download responsibilities be accompanied by adequate revenues so that municipalities would in fact be able to properly assume additional responsibilities.

Municipal respondents indicate that charters should contain "an expanded menu of tax instruments [where municipal authorities would] have the freedom to pick and choose off the menu." A wide selection of revenue options are suggested, ranging from revenue-sharing to direct municipal taxation – including fuel taxes, resort taxes, local entertainment taxes, parking stall taxes, hotel room revenue taxes, road tolls, income taxes, and retail sales taxes.

Events like the Alberta "flip-flop" over municipal sharing of fuel taxes have also convinced some city respondents that a charter should include a dispute resolution mechanism.

Advantages

In addition to providing greater capacity (due to expanded fiscal tools) and flexibility to act (due to natural person powers and broad spheres of jurisdiction), charter legislation offers a number of advantages:

- *Protection from unilateral provincial downloading:* As the proposed charter would require municipal consent before any delegation of responsibilities from the provincial government, municipal authorities could use this prerequisite as a bargaining tool to receive provincial funding. As a municipal respondent stated, "the provincial government would have to come up with some financial compensation if municipalities were to take on new responsibilities."

- *Effective venue to resolve disputes:* City respondents indicate that the dispute resolution mechanism would provide an effective venue for resolving disputes arising between city authorities and the province, or between municipalities. As a result, parties would not have to resort to the courts, a process that can be time consuming and costly.

- *Easy for the provincial government to implement:* Similar to the previous option, the provincial government could implement charter legislation with relative ease.

Disadvantages

Despite the numerous advantages of charter legislation, respondents had several concerns:

- *Potential impact on provincial governments:* Some respondents, primarily provincial, were reticent about the idea of a charter for municipalities. According to one respondent, a municipal charter would signify the creation of "state municipalities" and "there is no need for [them] within the province." The fear is that a charter for municipalities would adversely affect the provincial government by making it harder for the government to deliver its services effectively without requiring the consent of the appropriate municipal authority and by reducing provincial revenues as a result of new revenue-sharing schemes.

- *Potential net tax increases:* Many respondents believe that municipal governments would use their new revenue tools to impose new taxes, resulting in a higher tax burden for individuals and businesses. According to them, this would detract from the business environment by deterring new commercial ventures from locating in the province or encouraging existing businesses to move elsewhere.

- *Limitation on cities to use revenue-generating tools:* Municipal respondents express a concern that, although a charter may allow them to select from a wider menu of revenue-generating tools, city authorities may be limited in the use of these tools in practice. Tax or fee increases may fail to generate revenues if people and businesses opt to relocate to adjoining communities that do not have access to or do not make use of these revenue-generating options due to the immobility of the tax base. As a result, cities may see an increase in "free riders" – those who benefit from what a city has to offer but in effect do not contribute to the city coffers.

- *Limited effectiveness of dispute resolution mechanism:* Many respondents express concerns about the effectiveness of the dispute resolution mechanism as the cities' recourse to a dispute with the province would likely be limited to mediation as opposed to binding arbitration. The disadvantage of using mediation is that, at the end of the session, the dispute may still be unresolved, leaving cities with no other option than to go through a costly and time-consuming judicial battle. For this reason, many city respondents would prefer resolving

disputes with the province through binding arbitration. However, they doubt that the province would agree to be subject to binding arbitration.

Although most city respondents welcome charter legislation as a fundamental step to building the relationship between the provincial and municipal governments, they note that it only addresses part of the equation in the tri-governmental relationship that exists in Canada. The provincial nature of the charter legislation precludes it from defining the role of the federal government on municipal issues. As a result, the proposed charter affects neither the federal-municipal nor the tripartite structures. As one interviewee indicates, "we still have to face constitutional reality" and respect the division of powers that flows from it.

DISCUSSION BOX 4:
The Scope of Charter Legislation – a Political Dilemma

An underlying concern that many respondents raise is the scope of new charter legislation. Should the province implement one charter statute for all municipalities? For cities only? Or should every municipality have its own charter? Here are some of the arguments for each variation:

Charter for all municipalities

- *Equal treatment for every municipality:* Some provincial respondents argue that it would be politically unsound to treat municipalities differently. As charter legislation is all about empowering local authorities, it would be "hypocritical" to give some municipalities more power than others.
- *No need to draw a line:* Provincial respondents fear that if the province provides different treatment to a group of municipalities, the "excluded" municipalities would perceive this action as the province abandoning them.

Charter for cities only

- *Avoids potential damage to smaller municipalities:* Some respondents anticipate that charter legislation may have a negative impact on smaller municipalities. As one respondent explains, smaller municipalities may not have access to, nor can they afford, qualified and experienced administrators to handle the broad responsibilities flowing from the proposed charter. Moreover, they may face additional hardship as they could be generating less revenue under a revenue sharing program (or tax increases) than what they are actually receiving in the form of provincial grants.
- *Maintaining the current equilibrium:* Creating a charter that would be applicable to cities only has the advantage of not disturbing the equilibrium that exists between smaller municipalities and their provincial governments under current municipal statutes.
- *Satisfying cities' needs:* Since the quest for a municipal charter originates mainly from city authorities, a cities charter would be most sensible. The enhanced capacity would allow cities to deal with urban-specific issues such as rapid growth, the need to provide services to an increasingly diversified population, the need to upgrade and renew infrastructure, more complex and sophisticated business transactions, and fiercer competition with other cities.
- *Good balancing act:* Many respondents believe that a charter for cities achieves a balance between a group of municipalities that needs more enabling power (cities) and those that are content with the status quo (smaller communities). Going further to accommodate each and every municipality's needs would become tedious and impossible to manage. Furthermore, enacting a charter that is too specific could eventually lead to the laundry list approach that some western cities currently face.

Charter legislation for each municipality

- *Address city-by-city needs:* Some respondents argue that individual cities have issues unique to them and a charter for all cities would not be enabling enough to cater to the specific needs of particular cities. One would expect that the City of Winnipeg, with a metropolitan population of close to 700,000, would have different issues than the City of Brandon, population 41,000. As a result, a separate charter for each municipality makes sense.

IMPROVING THE FEDERAL-MUNICIPAL RELATIONSHIP

Just as respondents urge changes in the provincial-municipal structure, they strongly believe that the federal-municipal structure also needs revision. A majority of respondents want to see the federal government develop a clear urban strategy with the collaboration of city authorities. In order to bring an integrated approach to urban policy and program development, respondents suggest the establishment of standing committees and the creation of a federal department responsible for urban affairs.

1. STANDING COMMITTEES

Just as city respondents propose the establishment of standing committees at the provincial level, they state that a similar mechanism should exist between federal departments and city authorities. Possible areas where the federal government could be involved include health, finance, immigration, Aboriginal issues, infrastructure, environment, human resources, and economic development.

Advantages

Respondents expressed two key advantages:

- *Bringing an urban perspective to federal policies:* Many city respondents see standing committees involving federal departments as a means to bring urban issues to the attention to the federal government and to propose federal solutions that would satisfy the cities' needs. As a result, establishing standing committees could influence the federal government to adopt "city-centric" policies in the future.

- *Ongoing communication:* Meeting on a regular basis would ensure that there is an ongoing dialogue between the various federal departments and city authorities. Potential benefits, according to a respondent, are more comprehensive exchange of information, harmonization of policies, and better coordination of initiatives.

Disadvantages

Despite these advantages, some respondents express concerns about establishing standing committees:

- *Federal government has the final say:* Some city respondents are pessimistic about the effectiveness of standing committees as they would not provide city authorities with a strong enough voice to significantly affect the federal government's policies. They believe that cities' participation would be limited to putting forward recommendations, with the federal government retaining the ultimate decision-making power.

- *Pressure to include all cities:* Although respondents did not have any difficulty in enumerating federal departments that would be included in the standing committees (Box 5), they could not agree on which cities should be included in these committees. From the federal perspective, "agreeing to deal with some cities only would, without any doubt, alienate the others." To avoid any political jumble, the federal government may feel compelled to include all urban regions across the country. Meanwhile, there is a fear from big cities that by casting a broad net, the voice of major cities would be diluted.

- *Pressure from provincial governments to be included in some committees:* Federal respondents indicate that federal-municipal committees could strain the federal-provincial relationship as the latter seeks to be included in some committees. Many respondents, from both city authorities and the federal government, are skeptical of the inclusion of the provincial government in what is supposed to be a mechanism to bring an urban perspective to federal policies. However, many recognize that, in order to avoid any allegations of constitutional infringement, the federal government may have to bow to the provincial governments' demands to be active participants in committee meetings. For cities, the inclusion of provincial governments would signify a weakening of their voice, not to mention a massive, and most likely unworkable, committee.

- *Conflicting and/or overlapping federal programs.* Many federal and municipal respondents express concerns that having department-specific committees might lead to overlapping programs and conflicting criteria for eligibility. According to one federal respondent, "we would not be maximizing the use of federal tax dollars."

DISCUSSION BOX 5: Federal Departments and Agencies Identified for Urban Standing Committees

- Canada Customs and Revenue Agency
- Canada Mortgage and Housing Corporation
- Canadian Environmental Assessment Agency
- Canadian Heritage
- Canadian Tourism Commission
- Citizenship and Immigration
- Department of Finance
- Department of National Defence
- Environment Canada
- Export Development Canada
- Fisheries and Oceans Canada
- Foreign Affairs and International Trade
- Health Canada
- Human Resources Development Canada
- Indian and Northern Affairs Canada
- Industry Canada
- Justice Canada
- Public Works and Government Services
- Transport Canada
- Western Economic Diversification Canada

2. DEPARTMENT RESPONSIBLE FOR URBAN AFFAIRS

To avoid some of the concerns with standing committees, many respondents propose that a department be made responsible for coordinating the federal government's activities on urban issues – an option already available to rural Canada (Box 6). Whether this implies creating a new ministry or adding to the responsibilities of an existing ministry (such as the Privy Council Office), the goal would be to provide an urban voice in present and future federal government policies.

Advantages

According to many city respondents, a department responsible for urban affairs offers several advantages:

- *Recognition of cities' importance:* Some respondents perceive it would represent "the federal government's recognition of the importance of cities and its willingness to support urban communities." It would also mean that someone in the federal cabinet would be responsible and accountable for actively bringing urban perspectives into the development of federal policies and programs.

- *Single point of contact for city authorities:* One city respondent claimed that there are so many programs within each federal department and agency that "cities often don't

DISCUSSION BOX 6:
Overview of the Canadian Rural Partnership

In 1998, two years after the Government of Canada announced its commitment to the economic renewal of rural Canada, the federal government created the Canadian Rural Partnership with a budget of $20 million over four years. The goal of the Partnership is to ensure a rural perspective is applied to federal programs, policies, and activities. Led by the Ministry of Agriculture and Agri-Food, 29 other federal departments and agencies make up the Interdepartmental Working Group (IWG), which meets on a regular basis to share information and ensure that all departments are working together on the Partnership.

The IWG's priorities are:

- Improving access to federal government programs and services
- Improving access to financial resources
- More opportunities, programs, and services for youth
- Capacity building, leadership, and skills development
- Infrastructure
- Connecting rural Canadians to the knowledge-based economy
- Strengthening economic diversification
- Access to health care
- Access to education
- Fostering partnerships
- Promoting rural Canada as a place to live, work, and raise a family – recognizing the value of rural Canada to the identity and well-being of the nation.

SOURCE: Government of Canada (www.rural.gc.ca)

know where to start and often miss out on opportunities." A department responsible for urban affairs would provide city authorities with a single point of contact.

- *Facilitating a holistic approach to urban issues:* As opposed to having individual federal departments each assisting city authorities within their specific mandates (e.g. Industry Canada in only industry-related issues, Environment Canada in environmental issues), the proposed department would help coordinate programs among various departments to ensure that the federal government adopts a holistic approach to urban issues.

Disadvantages

Respondents also see disadvantages to a federal department responsible for urban affairs:

- *Potential interference from provincial governments:* Many respondents express pessimism about the proposed department's capacity for action as they foresee conflicts with provincial governments. As a provincial respondent explains, "provincial governments are particularly sensitive to federal dealings with city authorities on their own doings," especially if the matter has some provincial implications. Unless the provincial governments are involved in developing urban programs, the proposed department could face significant obstacles from provinces.

- *Defining the scope of the department:* Which municipalities should fall under the scope of the proposed department? As a federal respondent indicates, "drawing boundaries is tricky." Should it include only major cities? All cities? Or every urban area, including towns and villages? Some city respondents are concerned that cities would not be well served by a department responsible for all urban areas due to the sheer number of urban regions.

Thus far, the proposed options have targeted the bilateral relationship between city authorities and the provincial and federal governments respectively. However, the primary flaw in each scenario is that one order of government is overlooked. The reality, acknowledges a respondent, "is that the health of western cities depends on the intermeshing of federal, provincial, and municipal policies and programs." It is to this tripartite relationship that we now turn.

DISCUSSION BOX 7: Role of a Department Responsible for Urban Affairs – Coordinating Secretariat Versus Full-fledged Ministry

Debate surrounds the possible role of a federal department responsible for urban affairs. Some respondents believe that the department's role should be restricted to that of a coordinating secretariat. In this respect, the department would ensure that there are no conflicts among federal departments' policies and programs. However, other respondents claim that this model is flawed as the department would lack the capacity to effectively enforce an urban focus in various departments' policies and programs.

Rather, these same respondents believe that the department should be equipped with a broad mandate, capable of instituting urban policies and delivering programs in any urban matter. A concern, however, is that some ministers would perceive the new department as a rival as it would be able to instigate policies and programs that may conflict with their own. Another potential concern for some ministers is whether part of their allocated budgets would be transferred to the new department. Unless the minister responsible for urban affairs possesses sufficient clout within the cabinet, more powerful ministries would simply take over the agenda, leaving the new ministry to the same fate as the former Ministry of State for Urban Affairs under the Trudeau regime.

IMPROVING THE FEDERAL-PROVINCIAL-MUNICIPAL RELATIONSHIP

Respondents propose two options to improve the federal-provincial-municipal structure: enhanced tripartite agreements and reform to Canada's constitution.

1. ENHANCED TRIPARTITE AGREEMENTS

Many respondents, particularly those representing western cities, view tripartite agreements favourably since they allow for desperately needed urban projects to proceed. However, respondents note shortfalls in current tripartite agreements – chiefly their short life, sporadic nature, financial burden for cities, and inconsistent participation of municipalities – that leave city authorities unable to take full advantage of these agreements. With these shortcomings in mind, respondents advance several enabling characteristics that future agreements should possess: consistency, equal representation, specific measurable objectives, and flexibility.

- *Consistency:* Many respondents argue that the lifetime of tripartite agreements is often "too short to make any significant impact." For example, a three-year policy to tackle homelessness such as the Supporting Communities Partnership Initiative (SCPI) is "hardly enough time to barely scratch the surface of the issue." As a result, some respondents argue that not only should agreements be for a longer term, but also that renewing the commitment for another term should be possible to allow for continuity.

- *Equal representation:* City respondents assert that their participation at the negotiating table is as important as any other government. Their experience and the extent of their knowledge at the local level are assets that could prove invaluable to determining the guidelines of future tripartite agreements. In this respect, many of them hold up as an example the Infrastructure Canada Program (ICP) between the Government of Canada and Alberta, where municipal representatives are given equal voting rights at every stage of the program.

- *Specific measurable objectives:* Many respondents indicate that it would be in the interest of all parties that tripartitite agreements be governed by some specific measurable objectives. However, they caution against getting too specific such that the agreement becomes impossible to implement.

- *Flexibility:* According to respondents, an effective tripartite agreement should also be flexible. Although the federal government has the greatest fiscal resources of the three, this should not mean that it is the only one that can initiate the negotiation of tripartite agreements. According to a federal respondent, initiatives should also start at the grassroot level. Another area that needs to be flexible is funding. According to city respondents, although tripartite agreements such as the ICP are beneficial to cities, equal cost sharing among the federal, provincial, and municipal governments is strenuous on the limited city finances. Some doubt that cities could handle two ICP-like agreements at any one time. Hence, many respondents propose that a lower financial municipal participation level be considered, the Vancouver Agreement (VA) being held out as an example. Additional financing could come from other stakeholders through public-private partnerships. Allowing each government to contribute according to its financial capacity is seen as a more equitable and pragmatic approach.

Advantages

Enhanced tripartite agreements not only reinforce many of the existing benefits associated with current tripartite agreements, but also provide for more effective agreements. Advantages are:

- *Targeted policies and programs:* With the full participation of city authorities at every stage of the agreement, proposed policies and programs would target the city's particular needs more effectively. Indeed, knowledge and expertise at the local level would provide important insights throughout the entire life cycle of the agreement, especially what will or will not work at the local level.

- *Multiple step policies and programs:* City respondents believe that a longer commitment from the federal and provincial governments would allow for the development of multiple step policies and programs to address complex issues such as homelessness. Indeed, some city respondents argue that addressing the homelessness issue will have been barely addressed when SCPI expires in 2003.

- *Reduced financial burden on cities:* Many city respondents claim that reducing the municipal government's fiscal role in tripartite agreements would allow cities more flexibility to use their limited financial resources for other activities or to sustain a greater number of tripartite agreements.

- *Opportunity for public-private partnerships:* Many respondents indicate that tripartite agreements that allow greater public-private partnerships would make possible projects that governments could not necessarily afford on their own. Transportation infrastructure is cited by many as an area where private participation would help spread the high cost generally associated with such projects.

- *Greater visibility for the federal government:* Tripartite agreements provide the federal government with an effective vehicle to enhance its image in the eyes of the citizens. As one federal respondent claims, the federal government is seldom "on many Canadians' radar," as the public's interaction with federal agencies is minimal. Signage and information dissemination flowing through tripartite agreements would help increase the federal government's visibility.

- *Greater accountability:* Respondents in favour of specific measurable objectives hold that these objectives set a higher level of accountability for all parties as the effectiveness of established programs under the agreement can be gauged with relative ease. This would help taxpayers see their money at work.

Disadvantages

Despite its numerous advantages, some respondents acknowledge that enhanced tripartite agreements also have many disadvantages:

- *Ad hoc nature of tripartite agreements:* Some city respondents remain pessimistic about the effectiveness of tripartite agreements, aware that they are ad hoc in nature. They have a limited life span and are often too short to make a significant difference in the long-term well-being of cities. In addition, their renewal is unpredictable. These same respondents see tripartite agreements more as a political tool for the federal government to get involved in the municipal sphere than as a vehicle to promote the sustainability of cities.

- *Federal government leverage:* Due to the federal government's significant financial capacity, respondents believe it possesses considerable leverage as to the particulars of any tripartite agreement. One respondent goes so far as to say that cities, which are financially constrained and in desperate need of such agreements, could only play a minor role at the negotiating table.

- *Political uncertainty:* Changes in government at the federal and provincial level have been known to cause delays in the negotiation and implementation of tripartite agreements. Ideological differences and the time required to bring a "newcomer" up-to-date are believed to be disruptive to these agreements.

- *Provincial control over municipal participation:* Many city respondents state that in the current legislative environment, cities remain under the authority of provinces and, as a result, whether cities participate at the negotiating table or not depends entirely on their respective provincial governments.

2. CONSTITUTIONAL REFORM

According to a few respondents, the numerous options proposed only tinker with existing municipal powers. In the final analysis, they fail to address the "real" problem: that the Constitution allocates all legislative powers between the federal and provincial government, even when there are three players (federal, provincial, and municipal governments) involved. The solution, according to these respondents, is constitutional reform that would take into account municipalities.

These respondents argue that the division of powers in sections 91 and 92 of the *Constitution Act, 1867* must be "re-jigged" to give way for the recognition of "municipal institutions" as one of three orders of government in Canada. Exclusive municipal powers would, if such reform were enacted, include matters of local interest and specific revenue-generating instruments.

Advantages

Some of the advantages advanced are:

- *Equal status for municipalities:* Recognizing municipalities as the third order of government in the Constitution "makes it official," according to some respondents. This change would propel municipal governments into the same league as the federal and provincial governments, and many believe that municipalities would then necessarily be treated as equals.

- *Stronger voice for municipalities:* Equipped with constitutional powers, the municipal voice would no longer be ignored if the federal and provincial governments wish to intervene in matters that could have local repercussions. As a result, respondents foresee more municipal consultations.

- *Bilateral agreements between the federal and municipal governments:* According to a federal respondent, the federal government would be able to engage with a municipal government without having to include the provincial government in areas of exclusive municipal jurisdiction. This direct relationship between the two orders of government could result in significant and meaningful bilateral agreements.

Disadvantages

Respondents have one major concern:

- *Absence of appetite for constitutional reform:* Some respondents acknowledge that even if this option is the optimal solution for Canada's cities, proposing constitutional reform would be like "opening pandora's box." The fierce debates surrounding the Meech Lake and Charlottetown Accords, and their aftermath are still vivid in many Canadians' minds and there is simply no political interest in re-invoking constitutional reform.

POLICY RECOMMENDATIONS

Extensive interviews with leaders at the federal, provincial, and municipal level about the effectiveness of existing intergovernmental mechanisms indicated that the status quo is not an option. Neither is constitutional reform. Thus, the parameters are clear: change is desired, and most would argue that it is required, but it must fall within existing constitutional constraints. In addition, proponents of change need to be at least cognizant of the current political climate, characterized by a reluctance to significantly shift power among Canadian governments.

Given these constraints, which of the many options raised show the greatest promise for western Canadian cities? Three options stand out.

1. ADOPT MORE ENABLING LEGISLATION

Recent events in western Canada indicate that provinces are bringing about changes to empower municipalities. Alberta is discussing alternative revenue sources with the Cities of Calgary and Edmonton; British Columbia is expected to enact the Community Charter; Manitoba has introduced the *City of Winnipeg Charter Act* in the legislature; and Saskatchewan's *Cities Act* has received Royal Assent.

Although these are positive actions, additional changes may be necessary. The current role of municipalities in western Canada suggests a need for more enabling municipal legislation that includes natural person powers for municipal authorities, spheres of jurisdiction instead of a "laundry list" of responsibilities, greater municipal control over their responsibilities, wider range of revenue generating options, and a dispute resolution mechanism.

Thus, in Alberta, although the current municipal legislation is considered enabling by many, some modifications may be necessary – in particular provisions ensuring greater municipal control over their responsibilities, and an expanded menu of revenue options. As cities have been most vocal about these modifications, their situations could, perhaps, be best addressed in the context of a cities charter.

In British Columbia, the imminent enactment of the Community Charter looks promising for all municipalities. While the City of Vancouver will still be governed by the *Vancouver Charter,* it will

be able to pick and choose desired aspects of the new Community Charter. It would be in Vancouver's interest to request the necessary changes in its Charter to reflect the enabling characteristics of the Community Charter.

In Manitoba and Saskatchewan, the provincial governments' initiatives are positive steps towards empowering their cities. However, even with the proposed changes, these provinces' municipal legislation will need further revision to be truly enabling.

2. CREATE FORMAL PROVINCIAL-MUNICIPAL AND FEDERAL-MUNICIPAL CONSULTATION MECHANISMS

Although the existing consultations are important, there is a need for regular provincial-municipal and federal-municipal interaction to ensure that governments are attuned to citizens' current and future needs. Creating formal mechanisms to allow these consultations to occur seems, therefore, a logical solution.

This report presented two options at the provincial-municipal level – a specific provincial-municipal committee and a Premier-Mayors meeting. At the federal-municipal level, options presented are a specific federal-municipal committee and a department responsible for urban affairs. However, as long as the essence of a formal consultation mechanism is maintained – i.e., to provide municipalities with a strong voice and an opportunity to develop common policies with the federal and provincial governments – the exact format should vary according to the parties' preferences.

3. INCREASE THE NUMBER OF ENHANCED TRIPARTITE AGREEMENTS

Tripartite agreements offer a mechanism for the federal, provincial, and municipal governments to combine their resources and expertise to build cohesive policies and programs that will benefit cities.

However, the current tripartite agreements have limits – chiefly their short life, ad hoc nature, financial burden for cities, and inconsistent participation of municipalities. To overcome these shortcomings, enhanced tripartite agreements – characterized by a longer life span with the possibility of renewal, the participation of each party at every stage of developing the agreement, measurable objectives, and flexible financing arrangements – are necessary. These agreements can be pursued in areas in which all three parties are directly or indirectly involved. Thus, tripartite agreements could cover areas such as transportation, infrastructure, affordable housing, urban Aboriginal People, immigration, health, and environment.

CONCLUSION

If the goal of the federal, provincial, and municipal governments is indeed to ensure the viability of Canada's western cities, then developing more effective intergovernmental mechanisms is crucial. This implies action that goes beyond tinkering with existing structures. Genuine improvements are necessary and, in some cases, this means major overhauls or even total replacements of existing mechanisms. This requires considerable political will on the part of provincial and federal governments. To their credit, they appear open to advancing this dialogue. Will they take the next step? ■

ENDNOTES

1) The *Cities Act* received Royal Assent on July 3, 2002. Proclamation is anticipated on January 1, 2003, at which time the Act will come into force.

2) On June 20, 2002, the Manitoba Legislature introduced the proposed *City of Winnipeg Charter Act* to provide the City with broader powers and authorities. Among the proposed changes, Winnipeg will be granted natural person powers, spheres of jurisdiction, new tools to address community priorities (e.g., financial support for neighbourhood rejuvenation and growth, and capacity to take title and repairing derelict properties), and enhanced public accountability (e.g., standardized notice requirements, standardized requirements for public petitions, power to increase the number of wards, and authority to appoint citizens as members to various committees). As of July 2002, the proposed Bill was still at the first reading stage.